

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

KATHRYN WIEDERSUM,

Case No. 21-CV-1733 (PJS/TNL)

Plaintiff,

v.

ORDER

FIRST RELIANCE STANDARD LIFE
INSURANCE COMPANY,

Defendant.

Mark Klotzbuecher, FIELDS LAW FIRM, for plaintiff.

This matter is before the Court on plaintiff Kathryn Wiedersum's objection to Magistrate Judge Tony N. Leung's report and recommendation ("R&R"), in which Judge Leung recommends that Wiedersum's claims be dismissed without prejudice for failure to prosecute. For the following reasons, Wiedersum's objection is overruled, the R&R is adopted, and the complaint is dismissed without prejudice.

Wiedersum filed this action against defendant First Reliance Standard Life Insurance Company ("First Reliance") on July 29, 2021. ECF No. 1. Wiedersum was required to serve the summons and complaint on First Reliance on or before October 27, 2021. Fed. R. Civ. P. 4(c)(1) and 4(m). She failed to do so.

On November 10, 2021, Judge Leung ordered Wiedersum to show cause within 30 days (that is, by December 10, 2021) why her claims should not be dismissed because

of her failure to comply with Fed. R. Civ. P. 4. ECF No. 4 at 1–2. Judge Leung specifically warned Wiedersum that failing to respond to his order to show cause “may result in dismissal of this action for failure to prosecute.” *Id.* at 2.

In response to Judge Leung’s order, Wiedersum did nothing. She did not serve her summons and complaint; she did not move for an extension of her deadline; she did not even contact Judge Leung to explain her situation. She simply ignored Judge Leung’s order.

On December 30, 2021—50 days after Judge Leung gave Wiedersum an additional 30 days to serve the summons and complaint, and 65 days after Wiedersum’s original deadline—Judge Leung entered his R&R recommending that Wiedersum’s complaint be dismissed without prejudice for failure to prosecute. ECF No. 5 at 2–3.

Only then did Wiedersum rouse herself into action. On January 5, 2022, she filed an objection to the R&R in which she alleges that she has been “stonewalled” by First Reliance. ECF No. 6 at 1. By “stonewalled,” Wiedersum apparently means that First Reliance has asked her to effect service as required by the Federal Rules of Civil Procedure. Wiedersum says that she “attempted to serve the defendant process in the normal manner with the insurer’s local counsel . . . but was informed that defendant will only accept process in the state of New York.” *Id.* Her attempt to serve First Reliance at its principal place of business in New York then ended in failure, she says,

because a doorman at that place of business told her process servers that “everyone was working virtually and there was no one to accept service.” *Id.* Wiedersum complains that, in her opinion, “this is not a valid excuse,” and argues that a defendant should not “use virtual work as a shield against proper service at their principal place of business” — as though First Reliance was working remotely to duck service of process instead of to protect the health of its employees. *Id.* Finally, says Wiedersum, her attorney did some legal research and discovered that she can serve process on First Reliance through the New York Secretary of State. *Id.* at 2.

Wiedersum does not explain why it took her attorney five months to do the 20 minutes of legal research necessary to learn how to effect federal service on a corporation in New York. Nor does Wiedersum explain why her attorney did not seek an extension of the original 90-day deadline for service, forcing Judge Leung to issue a show-cause order. Nor does Wiedersum explain why her attorney simply ignored Judge Leung’s show-cause order, forcing Judge Leung to enter the R&R.

Wiedersum’s main objection to the R&R is that it is “unjust for [her] to have to refile the suit and incur an additional filing fee and time expenditure.” *See id.* at 2–3. The Court disagrees. What would be “unjust” is for Wiedersum’s attorney to ignore the deadline for service in the Federal Rules of Civil Procedure and then ignore a show-

cause order issued by a magistrate judge—thereby inflicting needless work on a busy federal court—without any consequence whatsoever.

The Court agrees with Judge Leung that dismissal without prejudice is the appropriate consequence here. That will hopefully deter Wiedersum's attorney and others from similarly ignoring deadlines and orders while also ensuring that Wiedersum will be able to pursue her claims by filing (and timely serving) a new lawsuit. ECF No. 5 at 2–3 (citing *Hunt v. City of Minneapolis*, 203 F.3d 524, 527 (8th Cir. 2000), and *Nat'l Hockey League v. Metro. Hockey Club, Inc.*, 427 U.S. 639, 643 (1976)).

ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein, IT IS HEREBY ORDERED THAT plaintiff's objection [ECF No. 6] is OVERRULED; the R&R [ECF No. 5] is ADOPTED; and plaintiff's complaint [ECF No. 1] is DISMISSED WITHOUT PREJUDICE for failure to prosecute.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: January 11, 2022

s/Patrick J. Schiltz

Patrick J. Schiltz

United States District Judge